

Background and Position of the Government of Japan
Concerning the issue of former civilian workers from the Korean Peninsula
(FACT SHEET)

1. Japan and the Republic of Korea have built a close, friendly and cooperative relationship based on the *Treaty on Basic Relations between Japan and the Republic of Korea* and other relevant agreements that the two countries concluded when they normalized their relationship in 1965. The *Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea* (hereinafter referred to as “the Agreement”), which is the core of these agreements, stipulates that Japan shall supply to the Republic of Korea 300 million USD in grants and extend loans up to 200 million USD (Article I), and that the problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) as well as concerning claims between the Contracting Parties and their nationals is “settled completely and finally,” and no contention shall be made thereof (Article II). In addition, during the time of negotiation on the Agreement, the Republic of Korea proposed the “Outline of the Claims of the Republic of Korea against Japan” consisting of eight items including accrued wages, compensation and other claims of the requisitioned Koreans. Furthermore, during the negotiations, the Republic of Korea gave explanations that it demands general compensation on requisitioned workers and that such compensation means compensation for psychological and physical pain of requisitioned workers. In addition, according to the *Agreed Minutes to the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea*, “problem concerning property, rights and interests ... and concerning the claims ..., which is settled completely and finally ..., includes any claim falling within the scope of the “outline of the Claims of the Republic of Korea against Japan” (the so-called “Eight Items”), and ... therefore, no contention can be made with respect to the above mentioned Outline of the Claims of the Republic of Korea against Japan.
2. The Supreme Court of the Republic of Korea rendered a judgment against Nippon Steel & Sumitomo Metal Corporation (current Nippon Steel Corporation) on 30 October 2018 as well as two judgments against Mitsubishi Heavy Industries, Ltd., on 29 November 2018. By these judgments, the Supreme Court confirmed the lower court judgments that ordered those respondent companies, *inter alia*, to pay compensation to the plaintiffs concerning the issue of former civilian workers from the Korean Peninsula. These judgments clearly violate Article II of the Agreement and inflict unjustifiable damages and costs on the said Japanese companies. Above all, the judgments completely overthrow the legal foundation of the friendly and

cooperative relationship that Japan and the Republic of Korea have developed since the normalization of diplomatic relations in 1965. Therefore, the Government of Japan conveyed its position that these judgments are extremely regrettable and totally unacceptable and has strongly demanded that the Republic of Korea take appropriate measures, including immediate actions to remedy such breaches of international law.

3. However, the Government of the Republic of Korea failed to take any concrete measures. In addition, it was confirmed that the notice of approval for the application by the plaintiffs to attach the assets of the respondent Japanese companies was delivered. Therefore, the Government of Japan, reiterating that there is a dispute between Japan and the Republic of Korea concerning the interpretation and implementation of the Agreement within the scope of Article III, formally requested a diplomatic consultation on 9 January 2019.
4. Since then, despite a series of requests from the Government of Japan, including the one on 12 February, the Government of the Republic of Korea failed to respond to diplomatic consultations for more than four months. Furthermore, the plaintiffs' side announced that they filed an application for selling the seized assets of the Japanese companies when the steps of seizure have been and are being taken. Considering all such circumstances, the Government of Japan reached a conclusion that this dispute could not be settled through diplomatic channels. Accordingly, the Government of Japan, having regard to Article III.2 of the Agreement, transmitted a notification on 20 May 2019, referring the dispute to an arbitration board, which was to be constituted by Japan and the Republic of Korea, and initiated an arbitration process vis-à-vis the Republic of Korea.
5. Pursuant to Article III.2 and III.3 of the Agreement, the Republic of Korea is under an obligation with regard to the constitution of an arbitration board to address the dispute. The first step in this process was for the Government of the Republic of Korea to appoint an arbitrator within a period of 30 days from the date of receipt of the note verbale of the Government of Japan. The Government of the Republic of Korea failed to do so. Moreover, the Government of the Republic of Korea did not implement the second step of its obligation to choose a third country, the government of which is to designate an arbitrator for the Contracting Party. Japan deeply regrets that, as the Republic of Korea failed to abide by the procedures under Article III of the Agreement, an arbitration board under the Agreement referred to on 20 May could not be constituted.
6. On 19 June, the Government of the Republic of Korea announced its proposal indicating: (a) "it is desirable for the parties concerned to settle, by creating a source of funds through voluntary contributions from companies of Japan and the Republic of Korea, and supplying the corresponding amount of consolation money to the

victims in the relevant judgments”; and (b) “if the Japanese side accepts this, the Republic of Korea would be ready to consider accepting the consultation procedure under Article III.1 of the Agreement requested by the Government of Japan.”

The Government of Japan rejected the proposal of the Government of the Republic of Korea, pointing out that the proposal does not remedy the breaches of international law by the Republic of Korea and does not serve as a solution to the current problem, and that the position of the Government of Japan remains unchanged in urging the Government of Republic of Korea to accept the arbitration in accordance with the obligations under the Agreement.

7. As outlined above, the Government of Japan, from the standpoint of placing an emphasis on the rule of law, has made continuous efforts to resolve the issue of civilian workers from the Korean Peninsula based on the Agreement. However, the failure of the Republic of Korea to agree to arbitration, which is the dispute settlement procedure under the Agreement, constitutes further breaches of the Agreement, in addition to breaches of the Agreement created by the series of judgments of the Supreme Court of the Republic of Korea last year as well as related judgments and proceedings.

The Government of Japan is of the view that the settlement of this dispute requires the Republic of Korea to remedy its repeated breaches of international law. Japan renews its request for the Republic of Korea to immediately take concrete actions for such purpose.

(Reference)

Relevant provisions of the Claims Settlement Agreement

Note: This English translation was submitted by Japan and the REPUBLIC OF KOREA respectively to the UN Secretariat at the time of conclusion of the Claims Settlement Agreement, and was thereby made publicly available (Authentic texts are Japanese and Korean).

Article II

1. The Contracting Parties confirm that [the] problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally.
2. (omitted)
3. Subject to the provisions of paragraph 2, no contention shall be made with respect to the measures on property, rights and interests of either Contracting Party and its nationals which are within the jurisdiction of the other Contracting Party on the date of the signing of the present Agreement, or with respect to any claims of

either Contracting Party and its nationals against the other Contracting Party and its nationals arising from the causes which occurred on or before the said date.

Article III

1. Any dispute between the Contracting Parties concerning the interpretation and implementation of the present Agreement shall be settled primarily through diplomatic channels.
2. Any dispute which fails to be settled by the provisions of paragraph 1 above shall be referred for decision to an arbitration board composed of three arbitrators, one to be appointed by the Government of each Contracting Party within a period of thirty days from the date of receipt by the Government of either Contracting Party from the Government of the other of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon by the two arbitrators so chosen within a further period of thirty days or the third arbitrator to be appointed by the government of a third country agreed upon within such further period by the two arbitrators, provided that such third arbitrator shall not be a national of either Contracting Party.
3. If, within the periods respectively referred to, the Government of either Contracting Party fails to appoint an arbitrator, or the third arbitrator or a third country is not agreed upon, the arbitration board shall be composed of the two arbitrators to be designated by each of the governments of the two countries respectively chosen by the Governments of Contracting Parties within a period of thirty days, and the third arbitrator to be nominated by the government of a third country to be determined upon consultation between the governments so chosen.
4. The Governments of the Contracting Parties shall abide by any award made by the arbitration board under the provisions of the present Article.